



DNL:SRM:DLKaplan

U.S. Department of Justice
Civil Division, Appellate Staff
601 D Street, N.W. Room 9539
Washington, D.C. 20530-0001

DOCKET FILE COPY ORIGINAL

Tel: (202) 514-5083
Fax: (202) 514-7964

February 7, 2000

BY HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TWB-204
Washington, D.C. 20554

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FEB - 7 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **Response and Partial Opposition to Section 105 Reconsideration Petition**
In the Matter Of: Communications Assistance for Law Enforcement Act
CC Docket No. 97-213

Dear Ms. Salas:

Please find enclosed the original and six (6) copies of the Department of Justice/Federal Bureau of Investigation's Response and Partial Opposition to Section 105 Reconsideration Petition in the above-referenced matter. Copies of this filing are being served upon the Commissioners and involved parties separately. Thank you for your attention to this matter.

Very truly yours,

Daniel L. Kaplan
Attorney, Appellate Staff

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEB - 7 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 97-213

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Enforcement Act)
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**RESPONSE AND PARTIAL OPPOSITION TO
SECTION 105 RECONSIDERATION PETITION**

On March 15, 1999, the Commission released a Report and Order (SSI Order) implementing the systems security and integrity provisions contained in section 105 of the Communications Assistance for Law Enforcement Act of 1994 (CALEA).¹ On January 21, 2000, the Commission announced that three petitions for reconsideration of this Order had been filed, and that oppositions to these petitions must be filed by February 7, 2000. 65 Fed. Reg. 3,451 (Jan. 21, 2000). One of these petitions was filed by the National Telephone Cooperative Association (NTCA), a national association of local exchange carriers. See Petition for Reconsideration and/or Clarification of National Telephone Cooperative Association, October 25, 1999 (NTCA Petition). The Department of Justice/Federal Bureau of Investigation (the Department) hereby responds to, and opposes in part, the NTCA Petition.

¹ In the Matter of Communications Assistance for Law Enforcement Act, *Report and Order*, CC Docket No. 97-213 (rel. Mar. 15, 1999), *modified by* In the Matter of Communications Assistance for Law Enforcement Act, *Order on Reconsideration*, CC Docket No. 97-213 (rel. Aug. 2, 1999); *summary published in* 64 Fed. Reg. 51,462 - 51,470 (Sep. 23, 1999).

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The NTCA Petition makes two requests. First, NTCA asks the Commission to "clarify its rule to make obvious that a single person is not responsible for being law enforcement[']s point of contact, 24 hours a day, 7 days a week." NTCA Petition 1-2. The Department does not oppose this request. The Department believes that the language and purposes of section 105 can be effectively satisfied in this context as long as each carrier ensures that *someone* is available around the clock to assist law enforcement in the effectuation of lawfully-authorized surveillance, even if the carrier's "point of contact" is not the same person at all times. See Comments of the Federal Bureau of Investigation Regarding Implementation of the Communications Assistance for Law Enforcement Act, December 12, 1997 31-32 (requesting that carriers be required to appoint a "point or points of contact" available 24 hours a day, 7 days a week); cf. SSI Order ¶ 25 (carriers must appoint "officer(s) or employee(s)" to serve as the "point of contact" for law enforcement).

Second, NTCA requests that the Commission "exempt small, rural telephone companies from the requirements of [§] 64.2105" (NTCA Petition 3) of the Commission's implementing rules, which requires "[e]ach telecommunications carrier" to "file with the Commission the policies and procedures it uses to comply with" the SSI Order's requirements. SSI Order Appendix A, § 64.2105.

The Department opposes this request, which the Commission has already rejected pursuant to its review of a full round of comments on the issue. In its October 10, 1997 Notice of Proposed Rulemaking (SSI NPRM), the Commission requested comment on whether it should establish less burdensome filing requirements for small carriers. SSI NPRM ¶ 34; see also SSI Order ¶¶ 12-13, 53. After reviewing these comments, the Commission concluded that "the plain language of section 229(b)(3) requires *all* telecommunications carriers to submit to the Commission the policies and procedures adopted to comply with the requirements established under sections 229(b)(1)-(2)." SSI

Order ¶ 54 (emphasis added). This conclusion is plainly correct. Section 229(b)(3) mandates that the Commission's systems security and integrity rules "shall" include implementing rules requiring "common carriers" to submit policies and procedures for the Commission's review. CALEA § 229(b)(3). There is nothing in the statute's plain language that authorizes the Commission to exempt any carrier, or category of carriers, from this clear mandate.

NTCA identifies no flaw in the Commission's construction of the statute's plain language, nor does it locate any support for its own position in that language. Instead, NTCA urges that the authority to impose penalties for noncompliance set forth in § 64.2106 of the implementing regulations "is adequate to ensure that companies will develop and maintain compliant policies," and that concentrating its energies on penalizing noncompliance would be "a more effective use of the Commission[']s time and energy." NTCA Petition 4. But this is simply an argument against the statute itself, which mandates *both* that the Commission "shall" require carriers to file compliance policies (which the Commission "shall" review and order corrected if necessary), CALEA §§ 229(b)(3), (c), *and* that it "shall" consider violations of such policies to be violations of a "rule prescribed by the Commission," CALEA § 229(d). Arguments against the structure of the statute should be pressed before Congress, not before the Commission.

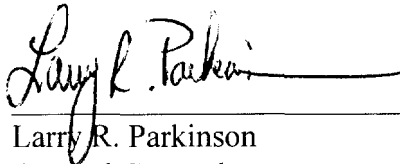
NTCA also argues that the SSI Order creates "burdensome filing requirements" that will be particularly difficult for small, rural carriers to meet. NTCA Petition 4. But NTCA does not attempt to deny that the statute requires each carrier to *have* a satisfactory compliance policy. See CALEA § 229(b)(1), (b)(3), (c), (d). (Rather, NTCA suggests that the penalties set forth in § 64.2106 of the implementing regulations are in themselves "adequate" to ensure that carriers will meet this mandate. NTCA Petition 4.) Thus, the "burdensome filing requirement" to which NTCA

refers must consist solely of the requirement that each carrier *send* its policy to the Commission. The Department does not believe that the process of filing a document with the Commission is an unduly burdensome one, even for a small, rural telecommunications carrier.

Thus, the Commission should deny NTCA's petition insofar as it seeks a modification of the Commission's implementing rules that would exempt small, rural telephone companies from the requirements of § 64.2105 of the implementing regulations.

DATE: February 7, 2000

Respectfully submitted,



Larry R. Parkinson
General Counsel
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20535



Douglas N. Letter
Appellate Litigation Counsel
Civil Division
U.S. Department of Justice
601 D Street, N.W., Room 9106
Washington, D.C. 20530

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)

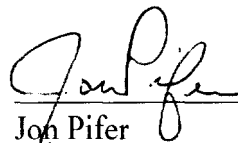
Communications Assistance for Law)
Enforcement Act)
_____)

CC Docket No. 97-213

Certificate of Service

I, Jon Pifer, an attorney for the Federal Bureau of Investigation, Washington, D.C., hereby certify that, on February 7, 2000, I caused to be served, by first-class mail, postage prepaid (or by hand where noted) upon the parties identified on the attached service list copies of the foregoing Response and Opposition to Section 105 Reconsideration Petition, the original of which is filed herewith.

DATED at Washington, D.C. this 7th day of February, 2000.



Jon Pifer

Chairman William E. Kennard
Federal Communications Commission
445 12th Street, S.W., Room 8-B201
Washington D.C. 20554

Commissioner Harold W. Furchgott-Roth
Federal Communications Commission
445 12th Street, S.W., Room 8-A302
Washington D.C. 20554

Commissioner Michael Powell
Federal Communications Commission
445 12th Street, S.W., Room 8-A204
Washington D.C. 20554

Commissioner Gloria Tristani
Federal Communications Commission
445 12th Street, S.W., Room 8-C302
Washington D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
445 12th Street, S.W., Room 8-B115
Washington D.C. 20554

Magalie Roman Salas
Secretary, Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington D.C. 20554

International Transcription Service
445 12th Street, S.W., CY-B400
Washington D.C. 20554

Attorneys for National Telephone Cooperative Association
L. Marie Guillory
Jill Canfield
4121 Wilson Blvd.
10th Floor
Arlington, VA 22203

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